



November 13, 2020

The Honorable Representative Dustin Burrows, Chair  
Texas House of Representatives Committee on Ways & Means  
Room E2.116  
P.O. Box 2910  
Austin, TX 78768

*Via electronic mail to [Paige.Higerd\\_HC@house.texas.gov](mailto:Paige.Higerd_HC@house.texas.gov)*

RE: Interim Charge 1.1: . . . Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following: SB 2, which is the Texas Property Tax Reform and Transparency Act of 2019. . . . Make recommendations for modifications as necessary and appropriate.

Dear Chair Burrows and Committee Members:

Thank you for giving the County of El Paso the opportunity to respond to the Committee on Ways & Means' interim charges.

El Paso County is strongly in support of exempting county public defenders offices (in addition to costs of private appointed attorneys) from Senate Bill 2's (86R, 2019) revenue cap as a means to assist counties in meeting indigent defense's unfunded mandate. As you are aware, SB 2, among other provisions, required local governments to hold an election if they wish to raise 3.5 percent more property tax revenue than the previous year. Exceptions to the revenue cap include costs of providing defense attorneys to indigent criminal defendants. However, that exception is limited to costs associated with counties paying private defense attorneys—and does not apply to county public defender offices, costs for which are still included under the revenue cap. (*See* Tax Code Sec. 26.0442.) Per the U.S. Supreme Court case *Gideon v Wainwright* and its progeny, counties are required to provide legal counsel to indigent persons facing class A and B misdemeanors, felonies and appeals related to those charged in Texas' criminal justice system. This is an unfunded mandate. Because it advantages costs for private attorneys, SB 2 is in tension with Code of Criminal Procedure Chapter 26, which gives counties the choice to meet this unfunded constitutional mandate by either appointing private defense counsel or by appointing its public defender office, if the county has such office. This proposal puts both choices on equal footing, better enabling counties to develop approaches to indigent criminal defense best suited to meet their communities' needs. Additionally, if non-revenue cap funding were available for public defenders, then revenue cap funds could support other county services.

Thank you again for this opportunity to offer comments on the Committee's charges. Please do not hesitate to contact the County should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "D F Collins". The signature is written in a cursive style with a large, stylized "D" and "F" at the beginning.

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